

CAUSE NO.

v.

TEXAS HIGHWAY PATROL MUSEUM,
TEXAS HIGHWAY PATROL ASSOCIATION,
THPA SERVICES, INC.;
TIMOTHY TIERNEY, KENNETH LANE
DENTON, MARK LOCKRIDGE,
STEVEN JENKINS,
RUBEN VILLALVA, JR., TED RIOJAS,
FRED RIOJAS, GREGG GREER, JAMES
COLUNGA AND ROBERT BERNARD, JR.
Defendants.

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TRAVIS COUNTY, TEXAS

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 COUNTY, TEXAS
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**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION
FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION
AND PERMANENT INJUNCTION AND ASSET FREEZE AND REQUEST FOR
APPOINTMENT OF RECEIVER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Attorney General GREG ABBOTT, on behalf of the State of Texas (“State”), hereinafter referred to as “Plaintiff,” complaining of Defendants TEXAS HIGHWAY PATROL MUSEUM (THPM), TEXAS HIGHWAY PATROL ASSOCIATION (THPA), THPA SERVICES, INC. (SERVICES) (collectively referred to as “THP entities”), TIMOTHY TIERNEY, KENNETH LANE DENTON, MARK LOCKRIDGE, STEVEN JENKINS, RUBEN VILLALVA, JR., TED RIOJAS, FRED RIOJAS, GREGG GREER, JAMES COLUNGA AND ROBERT BERNARD, JR. and for cause of action would respectfully show the Court the following:

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under a Level 2 discovery control plan, pursuant to Texas Rule of Civil Procedure 190.

II. JURISDICTION

2. This action is brought by the Attorney General of Texas, GREG ABBOTT, in the name and

on behalf of the interest in charity of the general public of the State of Texas to protect the public interest in the administration and accounting for funds that charitable entities solicit and receive from the public. This action is brought against the individual defendants for violations of their fiduciary duties as set forth in this petition.

3. This action is also brought by the Attorney General through the Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest, under the authority granted by Section 17.47 of the Texas Deceptive Trade Practices Act, TEX. BUS. & COMM. CODE §§ 17.41 *et seq.* (hereafter “DTPA”), upon the grounds that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by Sections 17.46(a) and 17.46(b) of the DTPA. The DTPA permits the Texas Attorney General to bring an action to restrain, by Temporary and Permanent Injunction, the use of any method, act, or practice declared to be unlawful by Section 17.46 of the DTPA, where such proceedings are in the public interest.

4. This action is also brought under the Texas Law Enforcement Telephone Solicitation Act (hereinafter “LETSA”) under Chapter 303 of the Texas Business and Commerce Code.

5. This action is also brought under the common law authority of the Attorney General to enforce and protect public charitable trusts. Defendants, in their individual and corporate capacities, have committed fraud and misrepresentations; have violated a constructive charitable trust; have engaged in a civil conspiracy to defraud; and otherwise have breached the common law fiduciary duties owed by officers, directors and employees of charitable organizations to 1.) the charitable organization for whose benefit they were supposed to serve and on whose behalf they solicited and accepted charitable funds; 2.) to the families of the slain DPS troopers for whom such funds were intended to be used; 3.) to the citizens of the State of Texas whose financial donations have provided

the source of the funding for these entities and individuals.

III. DEFENDANTS

6. Defendant TEXAS HIGHWAY PATROL MUSEUM (THPM) is a Texas Nonprofit charitable organization under Section 501(c)(3) of the Internal Revenue Code, which does business at 812 S. Alamo St., San Antonio, Texas 78205 and throughout the state of Texas as alleged herein, and may be served with process by serving its Executive Vice President and registered agent, Timothy Tierney, at its headquarters at 501 Oakland Avenue, Austin, Texas 78703.

7. Defendant TEXAS HIGHWAY PATROL ASSOCIATION (THPA) is a Texas Nonprofit organization under Section 501(c)(6) of the Internal Revenue Code, which does business throughout the state of Texas including Travis County as alleged herein, and may be served with process by serving its Executive Vice President and registered agent, Timothy Tierney, at its headquarters at 501 Oakland Avenue, Austin, Texas 78703.

8. Defendant THPA SERVICES, INC. is a for-profit organization registered in Washington, D.C. which does business throughout the state of Texas including Travis County as alleged herein, and may be served with process by serving its Executive Vice President and registered agent, Timothy Tierney, at its headquarters at 501 Oakland Avenue, Austin, Texas 78703.

9. Defendant TIMOTHY TIERNEY is the Executive Vice-President of the Texas Highway Patrol entities and may be served with process at THPM at 501 Oakland Avenue, Austin, Texas 78703 or his residence at 1004 Elm Street, Austin, Texas 78703.

10. Defendant KENNETH LANE DENTON is the Director of Texas Highway Patrol Services, Inc. and may be served with process at the THPM at 812 South Alamo, San Antonio, Texas 78205 or his residence at 5150 Broadway, Number 233, San Antonio, Texas 78209.

11. Defendant MARK LOCKRIDGE is the President of the THPM and a board member of the

THPA and may be served with process at his residence at 209 Chisolm Trail, Waxahachie, Texas 75165.

12. Defendant GREGG GREER is the President of the THPA and THPM and is a board member of the Texas Highway Patrol Museum and may be served with process at his residence located at 2719 Buchanan Rd, Halsville, Texas 75650.

13. Defendant STEVE JENKINS oversees the THPA Services, Inc. magazine ad sales and may be served with process at his place of business located at 111 W. Anderson Lane, Suite E328, Austin Texas 78752.

14. Defendant RUBEN VILLALVA, JR. is the Director of Marketing for the Texas Highway Patrol Museum and may be served with process at his place of business located at 2150 Trawood, Suite A-240, El Paso, Texas or his residence located at 11743 Gwen Evans El Paso, Texas 79936-0723.

15. Defendant TED RIOJAS is a board member of both the Texas Highway Patrol Museum and the Texas Highway Patrol Association and may be served at his residence at 1325 Twin Cove, Kyle, Texas 78640.

16. Defendant FRED RIOJAS is a board member of both the Texas Highway Patrol Museum and the Texas Highway Patrol Association and may be served at his residence at 101 Wright Landing, Cibolo, Texas 78108.

17. Defendant JAMES COLUNGA is a board member of both the Texas Highway Patrol Museum and the Texas Highway Patrol Association and may be served at his residence at 3918 E. Highway 34, Ennis, Texas 75119.

18. Defendant ROBERT BERNARD, JR. is a board member of both the Texas Highway Patrol Museum and the Texas Highway Patrol Association and may be served at his residence at 18 Grant

Circle, Richardson, Texas 75081.

IV. VENUE

19. Venue of this suit lies in Travis County, Texas for the following reasons:

- a. Under Section 123.005(a) of the Property Code, venue is proper in Travis County as this case involves breaches of fiduciary duties; and
- b. Under Section 17.47 of the DTPA, venue is proper because Defendants' principal place of business is at 501 Oakland Avenue in Travis County, Austin, Texas.

V. PUBLIC INTEREST

20. Plaintiff, State of Texas, has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that Defendants have, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons, and that Defendants adversely affected the unlawful conduct of trade and commerce, thereby directly or indirectly. The Attorney General further has reason to believe that Defendants have caused and will continue to cause injury, loss and damage to the State of Texas and its charitable donors.

VI. TRADE AND COMMERCE

21. Defendants have, at all times described below, engaged in conduct constituting "trade" and "commerce," as those terms are defined in section 17.45(6) of the DTPA.

VII. ACTS OF AGENTS

22. Whenever in this petition it is alleged that a Defendant did any act, it is meant that the Defendants performed or participated in the act, or Defendants' officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendants.

VIII. NOTICE BEFORE SUIT NOT GIVEN

23. Pursuant to § 17.47(a) of the Deceptive Trade Practices Act, contact has not been made with the Defendants herein to inform them of the unlawful conduct alleged herein, for the reason that the Plaintiff is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants would evade service of process and flee the jurisdiction, destroy relevant records and secret assets if prior notice of this suit were given. However, Defendants were contacted prior to suit and informed generally of the alleged wrongful conduct as Defendants have been issued Civil Investigative Demands and Requests to Examine documents and have been involved in providing sworn statements.

IX. SPECIFIC FACTUAL ALLEGATIONS

Texas Highway Patrol Association

24. Defendant Lane Denton filed Articles of Incorporation with the Texas Secretary of State on behalf of Defendant Texas Highway Patrol Association on June 19, 1990. The purpose of the designated 501(c)(6) corporation was to “improve educational and professional endeavors for highway patrol officers of the Texas Department of Public Safety and to conduct public awareness programs promoting safety activities.”

25. According to their Articles of Amendment filed with the Secretary of the State of Texas, the purpose of The Texas Highway Patrol Association is “to promote the interests of labor, and its principal purpose shall be to better the working conditions of people engaged in common pursuit, which is the worked performed by the highway patrol officers of the Texas Department of Public Safety.” Although the designation of THPA remains 501(c)(3) on its forms filed with the Texas Secretary of State, THPA files as a 501(c)(6) organization with the IRS.

Texas Highway Patrol Museum

26. On July 8, 1992, Defendant Lane Denton filed Articles of Incorporation for the Texas Highway Patrol Association Hall of Fame and Museum. The purpose of this 501(c)(3) charity was to “operate a museum dedicated to the Texas highway patrol and to promote a higher level of public awareness and understanding about the Texas highway patrol.”

27. Under the Articles of Amendment, the purpose of the Texas Highway Patrol Museum is “exclusively for charitable, religious, educational or scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt under Section 501 (c)(3) of the U.S. Internal Revenue Code.

28. Although the THP entities are separate and distinct corporations, the public’s perception with regard to these entities is that they are one organization, thereby confusing all consumers who receive solicitation phone calls and who donate to the charity. In fact Goldie van Guilden, an employee since 1992 believes that all three entities are one corporation. (*See Exhibit 1 attached hereto and incorporated herein*).

29. Defendants THPA and THPM provide literature to the public that indicates that both organizations are both charitable organizations. (*See Exhibit 1, attached hereto and incorporated herein*). There is no distinction to the public that only one is a public charity and the other is not. Charitable donations are to be made to the Museum. However, those employees who are hired to make calls to solicit donations are trained to tell the public that the callers are soliciting on behalf of the Association, which is a 501(c)(6). (*See Exhibits 2 and 3, attached hereto and incorporated herein*).

THPA Services, Inc.

30. On May 26, 1994, Defendant Lane Denton filed incorporation paperwork for Defendant

THPA Services, Inc.. The stated purpose of this corporation was to “provide membership and other services to police membership associations and other private law enforcement organizations.” Presently, Services, Inc. publishes the Texas Highway Patrol Magazine and is a for profit corporation.

Benefits Advertised are Misleading

31. Defendants claim that they provide “trooper benefits,” which consist of a death benefit fund, a funeral benefit and dental insurance. One “trooper benefit” is a monetary benefit of \$10,000 to the survivors of any trooper who is killed in the line of duty. The literature provided to consumers purports to provide this benefit to survivors of the slain trooper regardless of whether the trooper was a paid member of the Association. Another “trooper benefit” is a funeral benefit through Dignity Memorial, which is provided only to members of the THPA. This benefit is a “funeral protection certificate valued at \$2,500” to be given to the children and grandchildren of the fallen officer. When asked about this benefit, Defendant Tim Tierney replied that THPA does not pay anything and that “it’s just a letter sent out and it’s all run through Dignity Memorial.” If members want to choose to take advantage of this benefit, the trooper must contact Dignity Memorial directly (*See Exhibit 4, attached hereto and incorporated herein*). The last trooper benefit is dental insurance for the troopers and families. To utilize this benefit, the trooper must be a paid member of the THPA. THPA also pays for the same dental insurance for its employees, including all of the individual defendants.

32. Defendants also provide “educational benefits” which consist of the Captain Ed Pringle Scholarship Fund. Defendants also claim to have developed an award winning “Cruisin’ to Coffins” program, which is designed to educate students about the dangers of drinking and driving. However, Defendants did not create or produce of this program. Cruisin’ to Coffins was a project

of a boy scout, who prepared it as one of the requirements of obtaining his Eagle Scout status. Defendants' educational programs consist of sending out letters to inquire which school would be interested in receiving a copy of the Crusin' to Coffins DVD. However, the only schools that Defendants have sent letters to are within the city of San Antonio. Defendants allege that they are "continuously planning and designing new programs for area youth." However, after a thorough review of the records of the related entities, no such programs have been found. At his sworn statement, Executive Vice-President Tim Tierney was unable to articulate any new programs for area youth. In fact, the educational programs that are being "continuously" planned have remained the same programs that began 20 years ago and they are not even provided statewide. Defendants allegedly provide "additional benefits" and "much, much more." However, after review of their records for proof of providing additional benefits, no such additional benefits were found.

Entities are Misleading to the Consumers of Texas

33. Defendants Texas Highway Patrol Association, Texas Highway Patrol Museum operate businesses which illegally include "Texas Highway Patrol" in their name in violation of Gov't. Code § 411.017. This causes confusion for consumers as to the affiliation of the Defendants with the Texas Department of Public Safety Highway Patrol Division. Defendants are misleading consumers by giving the perception that they are affiliated with the Texas Department of Public Safety. Consumers have complained that when they receive phone calls, the caller ID misleads the consumer to believe it is a call from the actual Highway Patrol Division of the Texas Department of Public Safety. (See Exhibit 5, *attached hereto and incorporated herein*).

34. Defendants also use decals in connection with their entities which are deceptively similar to the badge used by the Highway Patrol Division of the Texas Department of Public Safety. (See Exhibit 6, *attached hereto and incorporated herein*). No approval to use such decals from the Texas

Department of Public Safety has been obtained by Defendants as required under the law.

35. Defendants falsely represent that 100% of the money solicited as donations will all be paid to the families of slain law enforcement officers. (*See Exhibit 7, attached hereto and incorporated herein*).

36. Defendants falsely represent that they are associated with a legitimate law enforcement agency, when in fact, there is no such association or connection with any law enforcement agency. (*See Exhibit 5, attached hereto and incorporated herein*).

37. Defendant THPA represents in its instructions used by its telephone solicitors that donations to THPA are tax deductible, when, in fact they are not, as THPA is a 501(c)(6) organization. (*See Exhibit 2, attached hereto and incorporated herein*). Further confusion results in the fact that even though it is the Museum who distributes the funds to the slain troopers, the telemarketers for the Museum are given a set of Frequently Asked Questions that they are to follow if questions are asked by the consumers from whom they are soliciting. *Id.* The questions clearly state that telemarketers are to respond to consumers as if the Association is the organization which is doing the soliciting, which only further misleads and confuses members of the public because it is the Museum which distributes the funds to the families of the slain troopers. Furthermore, because the Association is clearly soliciting donations, they are required to register with the OAG under the LETSA. They have not registered and are in violation of the statute. Tierney acknowledged that the Association is in violation of the statute. (*See Exhibit 8, attached hereto and incorporated herein*).

38. The Museum is the entity that provides the death benefit. Therefore, because the Museum is a 501(c)(3) organization, donations made to the Museum are tax deductible. However, consumers are able to designate if they want their money to go towards dental insurance, which is a program of the Association. The Association is a 501(c)(6) entity and, therefore, donations designated for the

dental insurance are not tax deductible. However, this information is not relayed to the consumer. Such practice causes further confusion to those who donate their money to the dental program.

Policies and Procedures of the Board are Not Followed

39. The OAG has requested that all three of the Texas Highway Patrol entities furnish a copy of their policy manuals. (*See Exhibit 9, attached hereto and incorporated herein*). The OAG was provided a copy of one “policy manual” of the Texas Highway Patrol Museum. (*See Exhibit 10, attached hereto and incorporated herein*) A letter from the organization’s counsel dated April 23, 2009, was provided in the records that Tierney provided in response to the OAG’s Request to Examine. (*See Exhibit 11, attached hereto and incorporated herein*). In this letter, counsel informs Tierney that the policy manual was required for all public charities by the IRS by the end of 2008. *Id.* In that same letter, counsel instructs Tierney to backdate the board meeting minutes for the November 2008 board meeting to reflect adoption of such manual. *Id.* Furthermore, there is no proof that any of the board members have signed an annual confirmation that each board member has read and will comply with the code as stated in the Museum’s policy manual.

40. Even if these policies had been developed, approved and signed by all board members, the Defendants are in violation of the policies and Tierney has admitted such. (*See Exhibit 12, attached hereto and incorporated herein*). This is especially true with regard to the Museum’s credit card usage policy. When asked about the credit card policy, Tierney’s first reply was that they did not have one. *Id.* When he was shown the policy during his sworn statement and asked questions about it, he responded that it was not complied with. The policy requires disciplinary action, including termination, for personal use of credit cards. The policy also states that when the card is used to pay for meals, the staff must indicate on the receipt who was in attendance at the meal and the purpose of the meal. (*See Exhibit 13, attached hereto and incorporated herein*). Tierney has admitted that

he never requests receipts from the company cardholders and that he “just takes their word for it” that all expenses are related to the business. (See Exhibit 14, *attached hereto and incorporated herein*). There is no independent review of the business expenses of any of the organizations.

Donor’s Intent is Not Carried Out

41. When mailing a donation, the consumer is able to include additional monies if desired. They are also able to “check the box” to designate the charitable programs to which they want their money distributed. However, the Defendants are not fulfilling the donor’s intent. In fact, Goldie van Gulden, an employee for almost 20 years, stated that when someone sends in an amount and checks three or more boxes, they are unable to allocate it that way and will simply guess where the donor intended the money to go. (See Exhibit 15, *attached hereto and incorporated herein*).

42. The Museum receives both cash and check donations on a daily basis and the donations can be as much as \$10,000.00 a day. However, the policies for dealing with cash and checks are not the same. When cash is received in the mail, the cash is counted by the office staff and then taken to upstairs to Tierney’s office where it sits for a week or two and then it is deposited into the bank. (See Exhibit 16, *attached hereto and incorporated herein*). If one of the office staff needs cash for their own personal use, Tierney allows the employee to take the cash, but the employee will write a check for the money and deposit it into the account of the charity. (See Exhibits 17 and 18, *attached hereto and incorporated herein*). Tierney also stated that the office uses the cash donations to pay for birthday luncheons of the staff. (See Exhibit 19, *attached hereto and incorporated herein*). These cash donations are not kept in a locked secure box, but are kept in an unlocked filing cabinet. The office does not have video surveillance cameras and there are no checks and balances to insure the accountability of the funds. (See Exhibit 20, *attached hereto and incorporated herein*).

Tax Documents of the Entities

THPA

43. The OAG has examined several Form 990s of the Association. In 2008, THPA reported \$17,393 in total expenses, but they failed to designate what expenses were program related. Their tax return reflects that a \$10,000 death benefit was issued to Michaela Burns, widow of Trooper James Scott Burns who was killed in the line of duty in 2008. (*See Exhibit 21, attached hereto and incorporated herein*). However, it is the Museum which was supposed to have provided the death benefit.

44. In years 2007, 2008 and 2009, THPA Services, Inc. owed the Association over \$600,000.00. As evidenced in the tax returns of the Association, the loan balance has remained the same. Defendant Tierney was unable to articulate in his statement the specifics of the loan, including purpose of the loan, whether formal documentation existed on the loan or whether the Board was aware of the loan. (*See Exhibit 22, attached hereto and incorporated herein*).

THPM

45. The Museum's revenue is primarily comprised of charitable donations from the public. In 2009, the Museum received contributions that amounted to \$2,137,515. However, minimal funds, if any, were used for charitable purpose. *Id.*

Spending Habits of the Entities

46. To make purchases for their expenses, the entities' employees use credit cards (American Express, Citibank and Bank of America). The OAG has analyzed credit card statements of American Express and Citibank. The OAG analyzed the American Express account for The Kitchen Door, Inc.. Tierney informed the OAG that he helped his friends, who were the owners of The Kitchen Door, Inc., to get a credit card. Once his friends ceased using the credit card, Tierney continued to

use the credit card for the THP entities because “American Express changed the way they do their credit lines...the credit line was too low on the Texas Highway Patrol Association account, so I used the other card. But all the charges that are on there are for business expenses related to our organizations.” (See Exhibit 22, *attached hereto and incorporated herein*). For a one year time period (July 2009-July 2010), the entities charged \$239,276.71 on this one credit card alone. Some of the charges included tickets to Sea World, airfare to Massachusetts, movie theater tickets and charges to a video game rental website. (See Exhibit 23, *attached hereto and incorporated herein*). Such usage of the money of a public charity is a gross misuse of the funds and does nothing to further the purpose of the charitable mission.

47. After analyzing the Citibank credit card, similar findings were made. For the time period September 2009 to June 2011, the organizations charged a total of \$169,875.50. *Id.* Some of the charges included tickets to Salt Lake City, Utah, tickets to Six Flags Fiesta Texas, plane ticket to Germany, hotel charges from Napa Valley, California and visits to the Alamo Drafthouse Cinema.

Lane Denton

48. Defendant Lane Denton is the Director of THP Services, Inc. and allegedly volunteers at the museum. Denton was formerly the Executive Director with the Texas Department of Public Safety Officer’s Association [DPSOA], an organization whose mission is to improve the general welfare of the Department of Public Safety Personnel. While serving as Executive Director with DPSOA, Denton was indicted for stealing and misappropriating monies which belonged to DPSOA (See Exhibit 24, *attached hereto and incorporated herein*).

49. In addition to allegedly stealing and misappropriating funds that did not belong to him, it was also alleged that Denton deliberately violated the policies and procedures of the Board of DPSOA in failing to submit contracts for the Board’s approval and failing to obtain two signatures on checks

written by Denton on behalf of the DPSOA. In January 1990, DPSOA terminated Denton's employment. While Denton was under indictment and being tried for the acts he committed while serving as Executive Director with DPSOA, Denton was actively starting the similar Texas Highway Patrol entities as evidenced in the Articles of Incorporation filed with the Secretary of State. (See Exhibit 25, *attached hereto and incorporated herein*).

50. Denton and the other individual Defendants have consistently violated the board policies of the corporate Defendants. Denton uses credit cards in the name of the Texas Highway Patrol for his own personal benefit and gain. (See Exhibit 23, *attached hereto and incorporated herein*). There are suspicious charges that do not appear to be related to any business of any of the entities. Charges include purchases from Starbucks, car washes, child care services, grocery stores, restaurants, fitness centers, numerous book stores, meat markets, a thrift store and dental bills. *Id.* No receipts have been provided to demonstrate any business related reason that such charges were made.

51. Denton appears to have loaned approximately \$6,000.00 to the THPA. However, no paperwork was completed on the loan and there is no evidence that the Board of the THPA approved such loan. (See Exhibit 21, *attached hereto and incorporated herein*).

Tim Tierney

52. Defendant Tierney has been the Executive Vice President of all three entities since the early 1990's. Tierney acknowledges that he is the one individual that all employees report to. According to him, Tierney's duties consist of paying the bills and overseeing the operations of all three entities.

Tierney uses credit cards in the name of the THP for his own personal benefit and does not reimburse the entity. Tim Tierney acknowledges that he is the one person in the entities who pays the bills and is the only one with the authority to sign checks on behalf of the entities. Tierney acknowledges that he does not keep track of his own receipts and he never requires any of his

employees to submit receipts to him to demonstrate that all charges are, in fact, legitimate business expenses. Tim Tierney has grossly misused the charity's money and is under the perception that as long as any expense incurred by him or anyone else within the organization is coded internally as a "business expense," then it is, in fact a legitimate business expense.

53. Tim Tierney keeps an "office cat" at the Oakland Avenue location in Austin and freely admits that he pays for the expenses of the cat, including exorbitant vet bills, with money donated by the public for the purpose of helping slain troopers' families. (*See Exhibit 26, attached hereto and incorporated herein*). Tierney states that it is important to keep his employees happy and that is how he justifies having the office cat as a reasonable and prudent business expense. (*See Exhibit 27, attached hereto and incorporated herein*).

54. Additionally, Tierney takes numerous trips across the country and alleges such trips are business trips. Yet, on these trips he takes his son, former life partner and others without approval from the Board. Tierney never reimburses the charity for the expenses that he claims are business related when they are clearly personal in nature. For example, on one of these trips, Tierney flew to San Diego and purchased tickets to Sea World for himself, his life partner, Bill Billingsley, and his son, David. The organization paid for all three individuals to fly to San Diego and for the tickets to Sea World. However, Billingsley was in no way affiliated with any of the entities and his son is 11 years old. Yet, Tierney states that he would "bounce ideas from different people" as his justification of this trip being a business expense. (*See Exhibit 28, attached hereto and incorporated herein*).

55. Tierney also has several credit card charges to Gold Class Cinemas in Austin. When asked about charges to a movie theater paid for by money donated to benefit law enforcement families, Tierney was unable to articulate exactly what business was discussed or who it was discussed with.

Yet, he was able to state that this “meal and entertainment” expense was reasonable and prudent. (See Exhibit 29, *attached hereto and incorporated herein*). However, he said that it could have been his insurance agent discussing the policy renewal. When asked why this would not have just been discussed over the phone, Tierney replied, “I don’t know.” *Id.* When asked if he could provide receipts of the individuals who were present at those meetings, he stated that he did not keep receipts on those. (See Exhibit 30, *attached hereto and incorporated herein*). Tierney further stated that it could be a prudent business practice to keep records of all business meetings and appointments, but “since it’s just me, I don’t keep those.” *Id.*

56. When questioned about a trip to Hawaii that appeared on the charity credit card, Tierney stated it was a trip for his exchange student. (See Exhibit 31, *attached hereto and incorporated herein*). He also stated that it should be on his personal credit card and he did not recall if he reimbursed the charity for that personal expense. Even though it was requested of the entities, Tierney failed to provide the OAG proof of any reimbursements for personal expenses paid for by the entities.

57. The OAG also inquired about a trip to San Jose, California, where Tierney is from, taken by Tierney, his life partner and their son. Tierney stated the trip could have been related to the Museum or the magazine, but he did not “really recall.” The trip was business related according to Tierney because he was visiting his uncle and discussing business with his uncle regarding expansion of the museum. Tierney’s uncle is a retired vice president of purchasing of a hardware store. Tierney stated his uncle had “good business sense.” He was unable to articulate why his partner and son were with him on the trip, but was able to say it was a reasonable and prudent business expense. However, the Board was not made aware of this trip nor were they ever made aware that Tierney “consulted” with his uncle. (See Exhibit 32, *attached hereto and incorporated herein*).

Ruben Villalva, Jr.

58. Defendant Ruben Villalva serves as the Director of Marketing, in the El Paso office. His duties includes supervising all the telemarketers who make the calls to the public to request donations to the THPM and THPA. Villalva also has use of a corporate credit card and does not provide receipts for his purchases. (See Exhibit 33, *attached hereto and incorporated herein*). Charges incurred by Villalva included charges for XM Satellite radio, cigars, Costco Liquor, the Ultra Wet Lounge in El Paso, as well as numerous restaurants.

Steve Jenkins

59. Defendant Steve Jenkins, is the Marketing Manager for Services, Inc. and reports to Lane Denton. Steven Jenkins also has authority to use the company credit card. Jenkins has made charges to various restaurants and grocery stores that are billed to and paid for by the THP entities.

Board Members

Mark Lockridge

60. Defendant Mark Lockridge is the President of the Board of Directors for the Texas Highway Patrol Museum and also serves on the Board of the Association. Tim Tierney acknowledged that Lockridge is president in "name only." Lockridge attends board meetings with his family, is reimbursed by the THP entities for all expenses of himself and family while attending board meetings. Lockridge has never requested to see any records, financial or otherwise of any of the organizations. (See Exhibit 34, *attached hereto and incorporated herein*). As President of the Museum, Lockridge has breached his fiduciary duty owed to the charitable donors of the State of Texas to oversee that the Museum acts reasonably and prudently to carry out the stated purpose of the Museum. According to Tierney, Lockridge has never seen the spending reports of the Museum, has never reviewed the compensation packages of the Museum nor has Lockridge made inquiries

into how the Executive Vice President is paid nor does he evaluate the management of the organizations. He does nothing to oversee the operations of the organization. *Id.* However, Lockridge does benefit from the Museum in that when he travels to San Antonio or Washington, D.C. for purported Museum business, all his expenses, including hotel, travel, meal and entertainment expenses of his family members, are paid for by the Museum.

Gregg Greer

61. Defendant Gregg Greer is President of the Board of Directors for the Texas Highway Patrol Association and also serves on the Board of the Museum. Tierney stated that, like Lockridge, Greer serves in name only. Greer, like Lockridge, has also breached his fiduciary duty as President of the Board of the Association and as a board member of the Museum. Greer does nothing to oversee the operations of the entities. However, also like Lockridge, Greer receives all expenses paid to attend board meetings for himself and his family.

James Colunga

62. Defendant James Colunga serves on the boards of both the Association and Museum. Colunga has also breached his fiduciary duties owed to the charitable donors of the State of Texas for the same reasons as listed above for Lockridge and Greer. Colunga also receives all expenses paid by the organizations for himself and his family when attending the board meetings.

Robert Bernard

63. Defendant Robert Bernard serves on the boards of both the Association and Museum. Bernard has also breached his fiduciary duties owed to the charitable donors of the State of Texas for the same reasons as listed above for Lockridge, Greer and Colunga. Bernard also receives all expenses paid by the organizations for himself and his family when attending the board meetings.

64. All of the above named defendants have participated in soliciting and accepting donations

from the general public representing that such funds would be used for the charitable purposes of the Museum or for such charitable purposes designated by the donor. All Defendants have diverted a substantial amount of charitable funds and donations to purposes unrelated to the charitable mission of the Texas Highway Patrol Museum. All Defendants have also used the charities' assets for their own personal benefit and for their benefit of their families and friends, including but not limited to, numerous credit card charges for personal purchases.

Deceptive Solicitations and Continued Breaches of Fiduciary Duties

65. Defendants mail invoices to individuals for contributions which were never authorized by said individuals and then make aggressive attempts to collect these amounts. (*See Exhibits 35 and 36, attached hereto and incorporated herein*).

66. While soliciting donations over the phone, Defendants falsely represent to individuals that the person making calls to solicit donations for their "charitable purpose" is a highway patrol officer requesting money to help support local fallen officers. (*See Exhibit 5, attached hereto and incorporated herein*). Defendants also tell callers that having a TIIPA decal on their vehicle would be very helpful if stopped by law enforcement in the future. (*See Exhibit 37, attached hereto and incorporated herein*).

67. Due to the extreme deceptive nature of the calls, [Caller ID reading "Texas Highway Patrol" and the THPM/THPA callers identifying themselves as actual state troopers] Texans are led to believe that family members or loved ones have been in an accident. (*See Exhibit 5, attached hereto and incorporated herein*).

68. Christy Myrick Mattingly, whose husband Trooper Matthew Myrick was killed in the line of duty on January 20, 2006 never received the \$10,000 benefit that the Texas Highway Patrol Museum alleges to distribute upon the death of a trooper in the line of duty. After a review of her

bank records, the only monetary assistance received by the Myrick family was a \$700 check from the THPA Services, Inc., which is not the entity which is charged with distributing the death benefit. In his RTE responses, Tierney listed Ms. Mattingly as one of the spouses that was paid the \$10,000 death benefit. (*See Exhibit 38, attached hereto and incorporated herein*). Yet, on December 9, 2011, almost six years after her husband passed away, Ms. Mattingly received a phone call from Tim Tierney. Tierney told Ms. Mattingly that the organizations were being audited and as a result, he discovered she had not been paid the \$10,000 benefit. (*See Exhibit 39, attached hereto and incorporated herein*).

69. Defendants falsely represent to individuals that any contribution made benefits law enforcement. Defendants have even used the names of specific troopers who have died in the line of duty as a method to pressure individuals to donate to their “cause” even though they state that they do not use the names of troopers. (*See Exhibit 40, attached hereto and incorporated herein*). Defendants are profiting by successfully manipulating and harassing individuals who receive their telephone calls.

70. Defendants, in soliciting for donations for families of slain troopers, tell individuals that one hundred percent of their donated monies will go to the families of the slain troopers and will even go so far as to use the names of specific troopers who they are “collecting for.” *Id.*

71. Defendants maintain numerous bank and credit card accounts. Defendants incur personal charges on each account and the majority of the charges incurred on the accounts cannot be attributed to any charitable purpose.

72. Defendants do not use reasonable and prudent practices that should be utilized by any business and Tierney has acknowledged such. None of the entities have ever used a budget. In fact, in his RTE responses, Tierney stated that budgets are “non-applicable.” (*See Exhibit 41, attached*

hereto and incorporated herein). The entities have no separation of powers in place to insure that charitable donations are being properly spent in accordance with the donors' intent. Tierney relies on the CPA of the entities to detect any type of fraud, but in his sworn statement, Tierney stated that all documents which are sent to the CPA are prepared by Tierney. (*See Exhibit 42, attached hereto and incorporated herein*). When it was suggested by the CPA that the entities need to make cost reductions and restructure their fundraising, Tierney's response to the CPA's suggestion was to talk to the Director of Marketing and have him increase the solicitations to the public. (*See Exhibit 43, attached hereto and incorporated herein*). When asked if Tierney considered decreasing the expenses, he stated that he has done "all he can" to decrease expenses. The only change Tierney made was switching utility companies. *Id.*

73. Defendants have further breached their fiduciary duties by paying their employees excessive compensation. Executive Vice President Tim Tierney is paid an annual salary exceeding \$200,000. Director of Marketing Ruben Villalva, Jr. is paid over \$200,000 and Lane Denton, Director of Services, Inc. is paid over \$100,000. All receive full medical and dental benefits in addition to their salaries. In addition, Tierney and Denton both have cars that are paid for with funds donated to the charity. Tierney currently drives a 2010 Toyota 4runner and the \$1,000.00 a month lease payment is paid for with the organization's money. (*See Exhibit 44, attached hereto and incorporated herein*). Prior to the 4runner, Tierney had a 2007 Lexus. Denton currently drives a 2007 Nissan Titan, also paid for by charitable funds. Tierney claims that Denton needs the vehicle for business use, but on the insurance policy, which is paid for by the THP entities, the stated purpose of the vehicle is for pleasure, not for business. Also on the policy paid for by the THP entities is a BMW, which belongs to Tierney's life partner, Bill Billingsley. When asked why the BMW was on the company policy, Tierney replied that the part of the policy that insured Billingsley's vehicle was paid

for with his personal funds. (*See Exhibit 45, attached hereto and incorporated herein*). Tierney was unable to provide proof of such payment. Tierney has acknowledged that none of the board members have ever reviewed the compensation of the employees.

74. By the acts and practices described above, Defendants have established a pattern of misrepresentations and unethical conduct in which the money collected under the guise of helping troopers' families "when tragedy strikes" is solely for the purpose of obtaining pecuniary benefits for the Defendants.

X. VIOLATIONS OF THE DTPA

75. Defendants, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by DTPA sections 17.46(a) and 17.46(b), to wit:

- a. Passing off goods or services as those of another, in violation of DTPA section 17.46(b)(1) by use of the term "Texas Highway Patrol," creating a decal that is deceptively similar to the Texas Department of Public Safety Highway Patrol Division and informing members of the public that the person soliciting the donation is a state trooper;
- b. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA section 17.46(b)(2) by using a deceptively similar name and logo as the Texas Department of Public Safety Highway Patrol Division and allowing charitable donors to believe all of their contributions are tax deductible and allowing charitable donors to believe that they are being solicited by state troopers;
- c. Causing confusion or misunderstanding as to affiliation, connection, or association

with, or certification by, another, in violation of DTPA section §17.46(b)(3) by using a deceptively similar name and logo as the Texas Department of Public Safety Highway Patrol Division and allowing charitable donors to believe all of their contributions are tax deductible and will go for the stated purpose of the organization;

- d. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of DTPA section 17.46(b)(7) by using a deceptively similar name and logo as the Texas Department of Public Safety Highway Patrol Division and allowing charitable donors to believe all of their contributions are tax deductible and will go for the state purpose of the organization;
- e. Advertising goods or services with intent not to sell them as advertised, in violation of DTPA section 17.46(b)(9) by informing the public through their brochure that all families of slain troopers will receive a \$10,000 benefit and that a special bank account will be set up at local bank for the benefit of the trooper's family when such is not done, and;
- f. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed, in violation of DTPA section 17.46(b)(24) by allowing charitable donors to believe that all monies collected go to help assist family members of Texas State Troopers and further the stated purposes of the charitable organization.

XI. BREACH OF FIDUCIARY DUTIES

76. By soliciting and collecting funds from the general public under the guise of donating to a charitable purpose, Defendants owe a fiduciary duty to the consumers who contributed to the charity to use the funds in a way that fulfills the donors' intent. As such, all monies, pledges, and other property received by Defendants as a result of their solicitations constitute charitable trusts to be used for the charitable purposes for which they were solicited. As a result of their oral and written solicitations, Defendants are Trustees of such charitable trusts and are charged with fiduciary duties with regard to said charitable trusts. Defendants, by their actions described above in this petition, have breached, and will continue to breach, their fiduciary duties in this regard and have caused and will continue to cause, immediate and irreparable harm by failing to administer these charitable trusts in a prudent and reasonable manner to assure that the funds will be used for the purposes for which they were solicited by Defendants.

77. Defendants have several different programs, but when questioned about each program and how much money is in each fund, Tierney stated that it all goes into the "general fund." (*See Exhibit 59, attached hereto and incorporated herein*). Tierney states that they keep the allocation of funds internally, but everything is in the same bank account and there is no way to delineate how much has been appropriated for each program, thereby further failing to insure the donor's intent is achieved.

78. It is also clear from reviewing the documents provided by the Defendants that they commingle their funds in various ways. As referenced above, Lane Denton has allegedly loaned THPA money, but did not formalize the loan with the proper documentation. Defendants who have credit card access have all made purchases for transactions which appear to be for personal reasons. Tierney has admitted he allows purchases on the credit cards to be made without requiring any receipts to prove that expenses occurred were for actual legitimate business expenses. Tierney

merely takes the individual's "word for it." Additionally, the entities have made loans between each other without any formal paperwork or board approval. According to their tax returns, these loans are outstanding and the balance has remained unchanged for years, evidencing further failure to prudently account for charitable funds. (*See Exhibit 21, attached hereto and incorporated herein*).

XII. VIOLATION OF THE TEXAS LAW ENFORCEMENT TELEPHONE SOLICITATION ACT

79. Defendants have violated the Chapter 303 of the Texas Business and Commerce Code, the LETSA statute, by soliciting funds in violation of the statute. Defendants have violated the LETSA statute by soliciting consumers in Texas under the name of the Texas Highway Patrol Association without registering with the OAG as referenced above in paragraphs 36 and 37.

XII. FRAUD

80. Defendants, by and through their intentional acts and omissions described in this petition, have made repeated and materially false representations to the public concerning their solicitation of funds for purported charitable purposes, which were either known to be false when made or were made without knowledge of the truth of the matter asserted. Such false representations were made with the intention that they would be acted upon by the parties to whom the misrepresentations were made. Reliance upon these false representations has resulted in injury to the donors, individuals, and businesses located in the State of Texas and throughout the United States.

XIII. VIOLATION OF CONSTRUCTIVE TRUST

81. Generous members of the public of the State of Texas donated funds to Defendants for the benefit of worthy charitable causes such as helping families of slain troopers and educating the public. The same is true for members of the public who made donations to Defendants for assistance to peace officers and their families. Acceptance of funds pursuant to such representations established

a constructive trust for the benefit of the public, in such a way as to fulfill the donors' intent. Defendants, therefore, owe a duty to the donors and to the public to ensure that funds raised on behalf of these charitable causes be used for the specific purposes for which they were donated. Defendants have breached the duties to their donors who contributed money, by failing to use the funds collected for the express purposes for which they were donated. Defendants have thereby violated the constructive trust.

XIV. CONSPIRACY TO DEFRAUD

82. Defendants, in concert with their agents/employees, agreed to willfully and fraudulently obtain funds from the public by engaging in the course of conduct complained of herein, which Defendants knew had the tendency and capacity to deceive.

XV. NEGLIGENCE

83. Defendants, by their acts and omissions described herein, have failed in their capacities as officers, employees and corporate board members to exercise the degree of care in the conduct of their fiduciary duties that reasonably prudent persons would have used under similar circumstances to avoid the harm that their actions have caused. Defendants' acts and omissions, when viewed objectively from the standpoint of another at the time of occurrence, involved an extreme degree of risk, considering the probability and magnitude of potential harm their actions could cause. Defendants had or should have had subjective awareness of the risks involved in their actions, but nevertheless proceeded with conscious indifference to the potential harm.

XVI. GROSSLY NEGLIGENT MISMANAGEMENT

84. Defendants have violated the special duty of care imposed upon them in their capacities as fiduciaries by failing to oversee the management and control of the Texas Highway Patrol Museum

in accordance with the law governing non-profit charitable organizations. The individual Defendants have exercised their fiduciary duties in such a negligent manner that their lack of diligence and conscious disregard results in a breach of their fiduciary duties and subjects them to damages as a result of their gross negligence.

XVII. REQUEST FOR APPOINTMENT OF A TEMPORARY RECEIVER

85. In accordance with principles of equity, the special powers of Texas courts in matters pertaining to charity, the Attorney General requests the appointment of a temporary receiver. In light of the seriousness of the allegations raised in this pleading and the potential for continual damage to the charity and to conserve Defendants' assets and avoid damage to the interests of the public of the State of Texas, the Attorney General also requests the involuntary dissolution and liquidation of the assets by a receiver. The appointment of a temporary receiver is authorized by NPCA, Art. 7.04 and/or 7.05; MCLA, Art. 5.10; and TEX.CIV.PRAC.&REM. CODE §§ 64.001 *et seq.*

86. The Attorney General requests that a temporary receiver be appointed to represent the interests of Defendant entities during the pendency of this litigation, and to choose legal representation for Defendants in this litigation solely for the benefit of the charitable corporation; and order that such temporary receiver be given the authority and duty to conduct the general business of the charity. No other adequate remedy is available at law or in equity to accomplish these goals.

87. The Attorney General requests that the Court assign the receiver the following duties and grant the receiver the following authority to exercise those duties:

- a. The duty and the authority to marshal the assets of the Corporate Defendants, of any kind or nature, whatsoever situated, in order to account for all such assets properly belonging to the Defendants;

- b. The duty and authority to receive and control all books and records of the Corporate Defendants;
- c. The duty and authority to receive all incoming donations, payments, and accounts receivable;
- d. The duty and authority to determine all outstanding and valid debts of the Corporate Defendants and to generally conduct the legitimate business of the Foundation; provided that, the payment of debts must be approved by the Court;
- e. The duty and authority, within sixty (60) days from the entry of this order, to provide the Court and all counsel of record with an audit reflecting the totality of the Corporate Defendants's assets, expenditures, costs, fees and liabilities;
- f. The duty and authority to prepare a written report or reports for the Court and all counsel of record to accompany the audit. The report should include a physical inventory of all personal and real property, noting the market value of the property and the exact location and custodian (if other than the receiver) of all such property;
- g. The duty and authority to make demand upon any person in possession of the subject property that such property be transferred to him/her for the purposes of marshaling and preserving the assets of the corporate entities;
- h. The duty and authority to hire experts and professionals, including legal representatives, to perform duties for the Corporate Defendants and to represent the interests of the Corporate Defendants;
- i. The duty and authority, without further order of this Court, to file, prosecute, defend or settle any suit or suits filed against the Corporate Defendants; and
- j. The duty and authority to file motions seeking the Court's approval to take actions

beyond the scope of the requested receivership order, on behalf of the Corporate Defendants.

88. After the appointment of the temporary receiver, the Attorney General further requests that:
- a. All directors, officers, employees, accountants, attorneys, representatives and third-party consultants of the Corporate Defendants be ordered to place all property of the Corporate Defendants in the possession of the receiver and be prohibited from otherwise moving or transferring any of the assets of the Corporate Defendants;
 - b. All depository institutions holding accounts or funds of the Corporate Defendants be directed against transfer or concealing of funds of the Corporate Defendants and against interfering in any way with the lawful acts of the receiver, be directed to provide information to the receiver as requested and be directed to provide the receiver access to the Corporate Defendants' accounts and funds; and
 - c. All other third parties holding assets of the Corporate Defendants be ordered to place such assets in the custody of the receiver;

XVIII. REMEDIES SOUGHT

DISGORGEMENT

89. All of Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains, benefits or profits that are the result of Defendants' false, misleading, or deceptive conduct as described above. Defendants should be ordered to disgorge all monies fraudulently solicited together with all of the proceeds, profits, income, interest and accessions thereto. All funds

disgorged should be used to further the stated mission to help families of slain troopers and educate the public.

IMPOSITION OF A CONSTRUCTIVE CHARITABLE TRUST

90. When Defendants accepted funds from the citizens of Texas that were earmarked for a specific charitable purpose, a constructive trust for the benefit of the public was created. Therefore, all of Defendants' assets are subject to the Court's imposition of a constructive charitable trust, to be held solely for the specific purposes to which they were intended.

INVOLUNTARY DISSOLUTION OF DEFENDANTS

91. Defendant corporations should be ordered to dissolve as a result of Defendants' unlawful conduct as described above and pursuant to the Texas Business Organizations Code.

LIEN FOR LAW VIOLATION

92. Defendant corporations have engaged in the unlawful acts and practices as described above and pursuant to the Texas Business Organizations Code, and as such, all property of such corporations within this State at the time of such violation or which may thereafter come within this State, shall by reason of such violation become liable for such fines or penalties and for costs of suit and costs of collection. The State of Texas shall have a lien on all property owned by the Defendants from the date this suit is instituted.

XIX. CONCLUSION

93. Defendants have engaged in false, misleading and deceptive acts and practices in the solicitation and acceptance of funds from the public representing that such funds would be used for the specific designated charitable purpose of providing benefits for Texas state highway patrol officers, the promotion of professional law enforcement, providing monetary assistance to families of slain troopers and providing scholarships to troopers' families as well educational programs for

the public. Defendants have engaged in a common scheme and design willfully carried out to create a private benefit to Defendants. Charitable funds have fraudulently been used for Defendants' personal inurement. Individual defendants directly participated in unlawful and unethical conduct and are personally liable for such unlawful and unethical conduct. All Defendants knowingly participated in breaches of fiduciary duties as joint tortfeasors and are personally liable as such. The State of Texas further alleges, by their acts and omissions, Defendants have failed to exercise a degree of care in the conduct of their fiduciary duties that reasonable prudent persons would under similar circumstances to avoid the harm their actions have caused. Defendants, while holding themselves out to be organizations which provide support to Texas State Troopers in their times of need, were benefitting to the direct detriment of the charitable cause they claimed to be helping. The Defendants have breached their statutory fiduciary duties and their common law charitable trust fiduciary duties.

XX. NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS' ASSETS

94. Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction to preserve and protect Defendants' assets from dissipation. Defendants' assets are subject to dissipation for the following reasons:

- A. Defendants receive thousands of dollars on a daily basis from consumers through their schemes and use fraudulently solicited funds for personal gain;
- B. Monies received from consumers are dissipated quickly by Defendants, who use the money to pay off credit card purchases made by the individual defendants for their own benefit and have no charitable purpose whatsoever; and
- C. Defendants named herein receive monies as salaries or other compensation, dissipate such monies quickly for personal use, and otherwise deplete their bank accounts

monthly through other expenses. Defendants maintain and are signatories on the following known accounts:

- a. Prosperity Bank, Account Numbers XXX1441 (Texas Highway Patrol Museum), XXX1601 (Texas Highway Patrol Association), XXX1521 (THPA Services, Inc. , Inc.;
- b. Randolph Brooks Federal Credit Union, Account Number XXX153-7 (Texas Highway Patrol Museum);
- c. Charles Schwab, Account Number XXXX-4899 (Texas Highway Patrol Association);
- d. American Express, Account Numbers ending in 27001 (Texas Highway Patrol Association and Ruben Villalva)
- e. Citibank, Account Numbers XXXX XXXX XXXX 0609 (Tierney and THP); XXXX XXXX XXXX 0388; XXXX XXXX XXXX 2371 (Villalva and THP); XXXX XXXX XXXX 7634 (Villalva and THP); XXXX XXXX XXXX 1960 (Jenkins and THP); XXXX XXXX XXXX 1690 (Jenkins and THP); XXXX XXXX XXXX 4394 (Denton and THP); and XXXX XXXX XXXX 5943 (Denton and THP).
- f. Bank of America Royal Caribbean, Account Number ending in 4239.

95. For these reasons, the assets of the individual Defendants and the corporate Defendants named herein are subject to dissipation and secretion, and therefore should be frozen pending final trial so that meaningful use can be made for the charitable purpose for which the monies were obtained, and that full and final relief can be awarded at trial.

**XXI. REQUEST TO CONDUCT DISCOVERY PRIOR TO
TEMPORARY INJUNCTION HEARING**

96. Plaintiff requests leave of this Court to conduct telephonic, oral, written, and other Depositions (containing Requests for Production) of witnesses prior to any scheduled Temporary Injunction hearing, and prior to Defendants' answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled Temporary Injunction hearing. Some of these witnesses may live outside the State of Texas, and thus cannot appear at any scheduled Temporary Injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys. Plaintiff also requests leave of this Court to file any corresponding Business Records Affidavits with reasonable, shortened notice.

XXII. TRIAL BY JURY

97. Plaintiff herein requests a jury trial and tenders the jury fee to the Travis County District Clerk's office pursuant to Texas Rule of Civil Procedure 216 and Texas Government Code section 51.604 (West 2005 & Supp. 2007).

XXIII. PRAYER

98. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that a EX PARTE TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' officers, agents, successors, assigns, servants, employees, subcontractors, corporations and any other persons in active concert or participation with Defendants who receive actual notice of the injunction, from engaging in the following acts or practices:

1. Transferring, concealing, destroying, or removing from the jurisdiction of this Court

any books, records, documents, invoices, or other written or electronic materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody, or control except in response to further orders or subpoenas in this cause;

2. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendants without further order of this court; including but not limited to all bank accounts, credit card accounts, real and personal property located at 501 Oakland Avenue, Austin, Texas 78703; 812 S. Alamo, San Antonio, Texas 78205; 111 W. Anderson Lane, Suite E328, Austin Texas 78701; 8209 Long Point Drive, Houston Texas ; 2150 Trawood, Suite A-240, El Paso, Texas; 11037 FM 1960 Road, A-1, Houston, Texas; 3993 FM 1960, Houston, Texas; and 3040 FM 1960, #156, Houston, Texas.

3. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants or any of Defendants' assumed names, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;

4. Soliciting funds on behalf of or for the benefit of Defendants for any charity or nonprofit organization which uses "Texas Department of Public Safety," "Department of Public Safety," "Texas Ranger," or "Texas Highway Patrol" as any part of its name;

5. Representing, expressly or by implication, that Defendants, their publications,

museum or other organizations are affiliated with, endorsed by, authorized by, supported by, associated with, or in any way related to any law enforcement organization, group or cause including "Texas Department of Public Safety," "Department of Public Safety," "Texas Ranger," or "Texas Highway Patrol";

6. Mailing, faxing, or forwarding any invoice, letter, or thing to any business or person wherein such invoice, letter, or thing seeks, demands, or requests any type of payment or contribution from said business or person;

7. Telephoning, calling or in any way initiating contact with any business or person for the purpose of seeking, selling, or requesting any type of contribution, money, or funds for advertising from said business or person;

8. Operating any type of telemarketing operation on behalf of any publication; and

9. Operating any type of corporation, organization, group, association, museum, magazine or periodical which uses as any part of its name "Texas Department of Public Safety," "Department of Public Safety," "Texas Ranger," or "Texas Highway Patrol."

99. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

1. Adjudge against Defendants civil penalties in favor of Plaintiff in an amount up to \$20,000 per violation, pursuant to section 17.47(c)(1) of the Texas Business and Commerce Code;

2. Order Defendants to pay Plaintiff STATE OF TEXAS' attorney fees and costs of court pursuant to TEX. GOV'T. CODE §402.006(c), and TEX. PROP. CODE ANN. §§ 123.005(b) 114.064;

3. Order the cy pres of all assets and funds that were donated and intended for the charitable purposes; and

4. Grant all other relief to which the Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

GREG ABBOTT

ATTORNEY GENERAL OF TEXAS

DANIEL T. HODGE

First Assistant Attorney General

BILL COBB

Deputy Attorney General for
Civil Litigation

TOMMY PRUD'HOMME

Chief, Consumer Protection Division



KARYN A. MEINKE

State Bar No. 2403285

Assistant Attorney General

Consumer Protection Division

115 E. Travis, Suite 925

San Antonio, Texas 78205

Telephone: 210-225-4191

Facsimile: 210-225-1075

MARY T. HENDERSON

State Bar No. 19713750

Assistant Attorney General

Consumer Protection Division

300 West 15th Street

Austin, Texas 78701

Attorneys for State of Texas